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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 11-42 - Lifeline and Link Up Reform and Modernization
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

This letter is submitted on behalf of TracFone Wireless, Inc. ("TracFone") in response to several ex parte letters submitted by the Link Up for America Coalition ("Coalition") dated December 7 summarizing meetings held with several Commissioners' offices. In those letters and during those meetings, the Coalition continued to assert its position that its members (whom the Coalition refers to by the oxymoronic label "facilities-based resellers") should continue to receive millions of dollars in Link Up support from the federal Universal Service Fund ("USF") to subsidize such normal costs of doing business as marketing and advertising (which the Coalition labels "outreach'), order fulfillment, customer support and office support services. In several previous submissions, TracFone has opposed receipt of Link Up subsidies by wireless providers in general and by any providers except for the specific and limited purpose codified in the Commission's rules -- to reduce a "carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence." (47 C.F.R. § 54.411(a)(1)). Although the questions regarding Link Up support have been extensively debated, several assertions contained in the Coalition's latest ex parte letters, including assertions specifically directed to TracFone, warrant additional comment.

First, the Coalition continues to extol what it describes as its "voluntary self-regulatory efforts to control waste, fraud, and abuse," specifically its voluntary code of conduct to prevent receipt of duplicate benefits by consumers. The Coalition's code of conduct (which the Coalition acknowledges is based on requirements which the Commission already has imposed on certain ETCs) is commendable. However, the Coalition's efforts to take steps to prevent duplicate enrollment are largely irrelevant to the important underlying question before the Commission -- whether wireless resellers (including so-called "facilities-based resellers") should receive Link Up subsidies for any purpose other than their intended purpose -- to reduce carriers' customary charges (that is charges which are actually imposed on all customers, not routinely "waived," forgiven, or otherwise not imposed) of commencing telecommunications service for a single connection at the consumer's principal place of residence. The undeniable fact is that using USF resources to subsidize certain competitive providers' outreach (*i.e.*, advertising and marketing), service order fulfillment, customer support, etc., is itself one of the most egregious forms of waste, fraud and abuse of Universal Service Fund resources imaginable. As TracFone has noted in prior comments, wireless ETCs, including Coalition members, will receive about $68 million in Link Up subsidies this year to subsidize costs which other companies bear themselves as ordinary costs of doing business. That is $68 million which could be used to support broadband pilot programs, increase Lifeline enrollment, or increase benefits to Lifeline participants.

Indeed, the very notion that the Commission should allow these subsidies to continue based on the Coalition's "voluntary" commitment to self-impose requirements on its members that the Commission already has imposed on similar carriers does not withstand reasoned analysis. Basing Link Up support on the Coalition's voluntary code of conduct is similar to a child telling his/her parent that if he/she behaves and does not lie, cheat or steal, he/she should get a larger allowance. No public interest benefit is gained by allowing companies to receive additional subsidies from the USF for doing what they are supposed to be doing -- preventing duplicate enrollment in their Lifeline programs.

Next, the Coalition states that its members use what it calls a "community-based business model built on in-person contact and program-related education." That may be so. However, so too, does TracFone include community-based outreach as an integral part of its outreach to low-income consumers. However, TracFone does so without receiving Link Up support. ETCs are required to advertise their USF-supported services using media of general distribution (47 U.S.C. § 214(e)(1)(B)). Beyond meeting that minimum statutory requirement, how ETCs choose to market their Lifeline services is left to the discretion of the ETCs. Some, including TracFone and certain Coalition members, utilize community-based methods. They do so in the expectation that those methods will enable them to enroll additional customers in their Lifeline programs. Those are business decisions. The ETCs electing to use such methods should not have their community-based marketing costs subsidized by the USF.

At page two of its December 7 letters, the Coalition makes the curious observation about the state of Georgia. The Coalition states that its members have had "tremendous success" in enrolling Lifeline customers in Georgia despite entering the market after TracFone. Further, the Coalition states that TracFone's penetration rate tops out at about 20 percent and that the vast majority of the eligible low-income market is unaware of Lifeline service. Of course, whether or not TracFone has been successful in Georgia or in any other state, is wholly irrelevant to whether wireless resellers should be receiving Link Up subsidies. For the record, TracFone commenced Lifeline service in Georgia in January 2009. According to data posted on the Universal Service Administrative Company website (www.universalservice.org), TracFone is the largest provider of Lifeline service in Georgia -- wireless or wireline. Furthermore, according to USAC, Georgia is one of the few states with a Lifeline participation rate above 50 percent. Therefore, contrary to the Coalition's unsupported and erroneous claims, TracFone has had greater success than any other ETC in enrolling Lifeline customers in Georgia, proving that Link Up support is not necessary to achieve that success.

The Coalition than makes the wholly-unsupported claim that its members' competition with TracFone has produced "tangible consumer benefits" by causing TracFone to provide additional minutes in its Lifeline plans in response to that competition. That assertion is simply false. TracFone introduced its current Lifeline plans, including its most popular 250 minutes per month plan in August 2010 following months of market testing and research. According to USAC data, not a single Coalition member received any support from the USF in 2010. In short, the Coalition members were not even providing Lifeline service when TracFone enhanced its Lifeline offerings and those companies had no impact on TracFone's plan development. It is correct that another wireless Lifeline provider -- Assurance Wireless by Virgin Mobile -- was providing Lifeline service in certain states in 2010 and that Assurance offered plans which provided more minutes that did TracFone at that time. TracFone's revised Lifeline plans were, in part, a competitive response to Assurance's Lifeline offering. However, like TracFone, Assurance competes aggressively in the Lifeline market segment without receiving Link Up subsidies.

As in prior submissions, the Coalition once again asserts that activation fees are "general wireless industry practice." Of course, that is not correct with respect to wireless Lifeline providers since neither of the two largest providers -- TracFone or Assurance Wireless -- charge activation fees. Nonetheless, the Coalition claims that other wireless providers charge such fees -- AT&T Mobility ($36); Verizon Wireless ($35); Sprint ($36 -- but not on its Assurance Wireless Lifeline services); T-Mobile ($35); CellularOne ($40); SouthernLinc ($35); Cincinnati Bell ($35), and Qwest Wireless ($35). Conspicuously absent from this list are the activation fees charged by Coalition members. As described in the Coalition's November 14 ex parte letter, two of its members -- Global Connections and Telrite -- impose activation fees of $60.

In considering the wisdom of providing Link Up subsidies to reduce those carriers' "customary" activation charges, the Commission should question why those Coalition members choose to impose activation charges which are nearly double those of every major wireless carrier. There is, of course, a simple answer to that question: it is about maximizing their Link Up subsidies. Pursuant to the Commission's rules governing Link Up, ETCs may receive one-half of their customary connection charges, not to exceed $30 (47 C.F.R. § 54.411(a)(1)). In order to receive the $30 maximum allowable Link Up subsidy, ETCs like Global Connections and Telrite list their "customary" activation charges at $60. If their customary charges were at AT&T Mobility, Verizon Wireless, or T-Mobile levels, they would receive only $17 or $18 in Link Up subsidies. Stated simply, the opportunity to maximize their Link Up subsidies affords those ETCs an incentive to increase their activation fees to levels way above those of wireless carriers who do charge activation fees -- a textbook example of waste, fraud, and abuse of USF resources.

Finally, if the Commission were to agree with the Coalition that ETCs should receive Link Up subsidies in order to offset their costs of marketing and advertising, outreach, setting up customer service, enrolling customers, etc., then principles of non-discrimination and competitive neutrality compel that all ETCs who incur those costs should have the same entitlement to receive Link Up subsidies to offset those costs. Engaging in outreach (marketing and advertising), fulfilling customer orders, setting up customer support, etc., are costs borne by all Lifeline providers and have nothing to do with whether an ETC is facilities-based, a reseller, or, for that matter, a "facilities-based reseller." (With the recent revision of 47 C.F.R. § 54.101 to remove operator assistance and directory assistance from the list of USF-supported services, even those carriers who call themselves "facilities-based resellers" may now be just resellers and therefore precluded from being designated as ETCs and receiving USF support without forbearance). All ETCs who incur those costs should have the same opportunity to receive Link Up subsidies to offset those costs -- costs which have nothing to do with whether the ETCs provide USF-supported service in whole, in part, or not at all, using their own facilities.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,

Mitchell F. Brecher

cc: Hon. Julius Genachowski
Mr. Zachary Katz
Hon. Michael J. Copps
Ms. Lisa Hone
Hon. Robert M. McDowell
Ms. Christine Kurth
Hon. Mignon Clyburn
Ms. Angela Kronenberg
Ms. Sharon Gillett
Mr. Trent Harkrader
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Mr. Jonathan Lechter
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